



# Facts About

## Workers' compensation coverage for construction contractors

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When you hire – or subcontract with – a construction contractor, are you required to provide workers' compensation coverage? In some cases, the answer is "yes," even when the contractor is registered with the Department of Labor and Industries (L&I).

This fact sheet should help you answer this question. The issue is complex. L&I looks at a number of factors.

### **When is the hiring firm (or individual) responsible for paying workers' compensation?**

A firm (or individual) that directs or controls the contractor's work is generally responsible for providing mandatory workers' compensation coverage. Here are some situations that demonstrate the hiring firm's direction or control over the contractor:

- The firm directs the contractor in how the work is to be done.
- The firm provides training to the contractor.
- Two or more contractors perform the same type of work for the firm or work with the firm's employees or owner.
- The contractor is paid by the hour.
- The contractor uses the firm's tools or equipment.

A contractor is not considered to be under the "control" of a hiring firm if the firm merely specifies the date the work must be completed.

### **What if the hiring firm (or individual) still isn't sure whether to pay workers' compensation for its contractor or subcontractor?**

L&I may use several tests to determine if a contractor is covered by workers' compensation.\* If any one of the following four statements are true for the work arrangement, the hiring firm (or individual) is probably NOT responsible for providing the contractor's workers' compensation coverage.

1. The contractor provides labor other than his or her own. (In this case, the contractor/subcontractor would be paying workers' compensation for the workers.)
2. The contractor/subcontractor provides major equipment and his/her use of this equipment is not directly controlled by the hiring firm. Equipment is considered to be more than hand tools. Examples include a dump truck, backhoe, grader, etc. (Note: Supplying the material required on a job does not exempt a contractor from coverage.)

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\* The tests are described in the Revised Code of Washington, Chapter 51.08.180 and 51.08.195.

3. Even when a contractor is not hiring labor or providing equipment, the contractor is generally considered to be exempt from mandatory coverage if he or she is not controlled by the hiring firm (or individual) and **all five** of the following conditions are met:
- The work performed is in the building trades.
  - The contractor has obtained a contractor's license.
  - The contractor has his or her own principal place of business, which is eligible for a business deduction with the IRS.
  - The contractor keeps a separate set of records for business income and expenses.
  - The work is being performed for a firm (or individual) that also has a contractor's license.
4. Even when a contractor does not hire labor or provide equipment, the contractor is generally considered to be exempt from mandatory coverage if **all six** of the following conditions are met:
- The contractor is free from control. The firm (or individual) for whom the contractor works does not supervise the methods or details of the work or set the work hours and has no right to exercise such control.
  - The service is outside the usual course of the employer's business; **or** the services are performed outside of all places of the employer's business; **or** the contractor supplies the principal place of business from which the work is performed.
  - The contractor has his/her own business. For example: The contractor is registered with L&I as a contractor; the contractor has other clients; the contractor has a significant investment in the business (such as equipment); the contractor advertises to the public; the contractor had an active business prior to the current contract; the contractor could suffer a loss in performing the contract; **or** the contractor has his or her own principal place of business, which is eligible for a business deduction with the IRS.
  - The contractor is considered to be an independent contractor by the IRS (and not an employee).
  - The contractor has an active account with the Washington State Department of Revenue.
  - The contractor keeps a separate set of records for business income and expenses.

All of the conditions of either number **3** or number **4** (above) must be met for a contractor to be exempt. To make this decision, L&I considers not only the contract language but also how the contractor and firm (or individual) actually operate.

For more information, please call 360-902-4752 or the local L&I office nearest you.

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